

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
NORTHERN DIVISION**

JAMES ANTHONY McNALLY

PLAINTIFF

V.

CAUSE NO. 3:17-CV-847-CWR-JCG

DIRECTOR B.O.P. MARK INCH, et al.

DEFENDANTS

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the Court is Defendant Dr. William Porter's Objection to the January 28, 2020, Report and Recommendation ("R&R") of United States Magistrate Judge John C. Gargiulo, regarding Dr. Porter's *Motion to Dismiss Second Amended Complaint and for Summary Judgment* [71] and Defendant United States of America's *Motion to Dismiss* [73].

The R&R recommends that Dr. Porter's motion be granted in part and denied in part, namely dismissing Plaintiff James Anthony McNally's malpractice claim against Dr. Porter without prejudice due to lack of pre-suit notice and denying Dr. Porter's motion in all other respects. Separately, the R&R recommends granting the United States' motion and dismissing McNally's Federal Tort Claims Act (FTCA) claim against the United States without prejudice for lack of subject matter jurisdiction.

Having considered the Report and Recommendation, Dr. Porter's objections thereto, and applicable statutory and case law, the Court concludes that Dr. Porter's Objection fails to persuade and hereby adopts, as its own opinion, the Report and Recommendation of the Magistrate Judge.

Accordingly, Dr. Porter's motion is granted in part and denied in part. McNally's malpractice claim against Dr. Porter is dismissed without prejudice. The United States' motion is

granted. McNally's FTCA claim is dismissed without prejudice. A separate Final Judgment will issue this day.

SO ORDERED, this the 17th day of March, 2020.

s/ Carlton W. Reeves
UNITED STATES DISTRICT JUDGE